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**HOUSE POST AUDIT
AND
OVERSIGHT BUREAU**

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**Preliminary Report:
State-owned Farmland Program
(SOF)**

March 2000

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Post Audit and Oversight Bureau

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INTRODUCTION

The Massachusetts Department of Food and Agriculture (DFA) administers, through its Bureau of Land Use, the State-owned Farmland Program (SOFP). The SOFP was originally established to provide appropriate oversight of land at the state hospitals. Under its enabling legislation, M.G.L. c. 20 §§13-19, the Department of Food and Agriculture is authorized to issue “a permit to use available vacant public land for garden, arbor, or farm purposes.” (M.G.L. c.20 §14) The regulations pertaining to this program are 330 CMR 18.00 *et seq.* (See **Appendix 2.**)

The House Post Audit and Oversight (HPAO) Committee received a request to inquire into the State-owned Farmland Program, there being some concern about whether the Commonwealth is receiving “lease” rates comparable to the fair market value for leased farmland. The Committee directed its Bureau to conduct a preliminary investigation.

METHODOLOGY

The Bureau initially requested and reviewed documents from the Department of Food and Agriculture regarding the State-owned Farmland Program. Concurrently, the Bureau asked the Division of Capital Asset Management (DCAM) for their “procedures for leasing state-owned real property,” which DFA references in 330 CMR 18.01(a) as the leasing procedures for the SOFP. The Bureau contacted and interviewed various officials in other state and federal agencies with an interest in the program, and examined documents provided, including applicable regulations and laws, “leases”, rate information, requests for proposals (RFPs), responses to the RFPs, and correspondence. Additionally, the Bureau visited some of the properties in the SOFP.

FINDINGS

1. The Department of Food and Agriculture's (DFA) Bureau of Land Use is issuing so-called "leases" for the use of state-owned farmland; however, the Division of Capital Asset Management (DCAM) is the only state agency authorized to convey interests in state-owned land. These "leases," established for five years with an option to renew for an additional five years, should be issued as revocable-at-will licenses according to DCAM's guidelines. (See **Appendix 1.**)
2. The fee structure is complex. To obtain the rate of each "leased" parcel, the DFA basis depends upon a variety of factors. Those factors include: the value of the proposed crop; soil quality and management needs; technical advice from the United States Department of Agriculture's (USDA) Natural Resource Conservation Service and Agricultural Stabilization and Conservation Services; market-based rates determined by the USDA's Farm Services Agency's county-based offices; New England Agricultural Statistics; the rate of the previous "lease" on a particular field; knowledge of the local farmers and the local agricultural market; and the level of demand.
3. DFA is interested in expanding the State-owned Farmland Program as part of the Administration's goals to increase open space preservation in the Commonwealth.

RECOMMENDATIONS

1. The Department of Food and Agriculture should work with the Division of Capital Asset Management to convert its current five-year "leases" with an option to renew for another five years to revocable-at-will licenses in order to comply with M.G.L. c.7.
2. The Division of Capital Asset Management should notify all state agencies that it is the only agency with the authority under M.G.L. c.7 to lease state-owned property, and that all other agencies must issue licenses, under DCAM's direction, for the privilege to use state-owned property. This notification should take place on a regular basis, as there is some indication that changes in agency personnel with state land holdings necessitate regular notice.



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3. The Department of Food and Agriculture should consult with the Division of Capital Asset Management and with the Executive Office for Environmental Affairs (EOEA) regarding the feasibility of identifying existing state-owned real estate, as listed in the Real Property Report, for joint open space preservation and agricultural use. DFA shall report any such determination of feasibility, including the cost and level of initiative necessary, to the House Committee on Post Audit and Oversight.

STATE-OWNED FARMLAND PROGRAM STRUCTURE

The State-owned Farmland Program includes property under the control of the Department of Public Health, the Department of Mental Health, the Division of Capital Asset Management, and, most recently, the Metropolitan District Commission. DFA oversees and manages this land based on interagency agreements.

DFA currently issues five-year “leases” with an option to renew for an additional five years.¹ The revenue generated returns to the General Fund. The revenue generated in FY95 was \$15,265.30; FY96 was \$15,371.30; FY97 was \$17,148.70; FY98 was \$20,594.95; and FY99 was \$21,680.55, according to information the DFA provided to the Bureau.

Requests for Proposals (RFPs) for the State-owned Farmland Program are advertised in local newspapers, DFA’s Farm and Market Report, commodity group publications, and the Central Register. Additionally, they are posted in local USDA offices and with other agricultural organizations. The number of bids on a property varies, but typically DFA receives more requests for the RFP than responses to the RFP. DFA urges prospective bidders to weigh a variety of factors, including the distance of the land from the farmer’s home and/or other farmland, as well as concern about vandalism and maintenance issues. Any restrictions on the use of the land are enumerated in the RFP.

The Bureau inquired about insurance coverage that farmers in the SOFP maintain. DFA indicated that while there is no minimum requirement, the level of insurance coverage ranges anywhere from \$200,000 to \$10 million.

¹ A five-year lease, so called, with the Commonwealth is, in actuality, five one-year leases as funds are subject to annual appropriation. While a state lease is more secure than a one-year license, it is albeit less secure than a standard commercial lease.

Utilities are the sole responsibility of those farming the land. This is clearly stated in the contracts reviewed by the Bureau. DFA told the Bureau that even those who irrigate the land generally truck in water for that purpose. Furthermore, only one of the fields in the SOFP has any kind of building, so electricity and other utilities are not generally a consideration in this program.

Currently, before the option to renew a “lease” is exercised, the “lease” rates are renegotiated. Factors in changing the “lease” rate include the kind of growing season(s) the farmer has experienced, any improvements made to the quality of the fields (e.g., increased fertility or improved drainage), and the market value of the crops grown. DFA pointed out that a five-year “lease” is beneficial to the land and to the farmers; if a farmer knows he will be working the land for five or possibly ten years, he will be more eager to invest time and money into improving the field quality than if he only had the land for a year. A one-year permit to use the land may also have an effect on the number of RFP responses received, according to DFA.

DFA issues one-year permits in extenuating circumstances; for instance, if it is late in the growing season and/or if the property has just been added to the SOFP. For example, a one-year permit was given to a farmer who for several years has cultivated land formerly under Hampden County’s control. Upon the county’s dissolution, the farmer contacted DFA, who in turn contacted DCAM. According to DFA, DCAM indicated that a lease would be acceptable for this property; however, DFA did not receive written confirmation of this and therefore decided to issue a one-year permit until DCAM finalizes its decision of whether or not to include this land in the SOFP.

PERSONNEL

The SOFP, which currently includes over twenty properties throughout the state, is administered by one DFA employee. This land use administrator visits each property at least twice a year, in the spring and in the autumn; prepares a baseline report for each field which includes any existing issues on the land and photographs of the land; updates the baseline reports approximately every four years; prepares, advertises and reviews Requests for Proposals; maintains communication with tenant farmers; reviews field data reports issued yearly by each farmer; and maintains files on bids, monitoring, and property history. This state administrator is

also active in the Massachusetts Geographic Information System project -- a state mapping effort -- which is a responsibility separate from the State-owned Farmland Program.

LEASES VERSUS LICENSES

In the course of its investigation, the Bureau learned that under M.G.L. c. 7, DCAM is the sole agency authorized to convey interests in state-owned land, including leases. The SOFP “leases,” established for five years with an option to renew for an additional five years, should legally be issued as licenses according to DCAM’s guidelines. DCAM indicated that this is a common misconception among state agencies, so much so that DCAM has a form letter it sends to other agencies informing them that they should follow licensing procedures as established by DCAM. (See **Appendix 1.**) Since this seems to be a recurring issue, the Bureau recommends that DCAM inform all state agencies of these provisions on a regular basis, in order to avoid confusion that may arise when agencies with state land holdings experience personnel changes.

The Bureau uncovered some confusion about leases and licenses. For example, when questioned about issuing “leases” when they legally should be issuing licenses for use of the state-owned farmland, DFA responded that at the outset of the program in the early 1980’s, DFA worked in conjunction with DCAM (at the time, the Division of Capital Planning and Operations, or DCPO) to draft the standard lease still used for the State-owned Farmland Program. Additionally, DFA showed the Bureau documents indicating that DCPO used to review and approve each “lease;” however, according to DFA, approximately five or six years ago DCPO stopped returning the paperwork, and DFA’s attempts to follow up received little or no response. DFA continued to issue five-year “leases.”

In light of this confusion and miscommunication, the Bureau recommends that DFA and DCAM work together to establish an adequate licensing agreement for the State-owned Farmland Program, one that complies with the law and serves the needs of Commonwealth and the farmers involved in the program. DCAM has indicated to the Bureau a willingness to provide technical assistance to DFA on this matter.

DFA is concerned that one-year licenses are not the most conducive arrangement for farmers, who are reluctant to invest time and money into a field that may only be theirs to work for a year. In an effort to afford farmers greater opportunity and flexibility with state-owned

farmland, DFA advised the Bureau that there has been some discussion among the agency about requesting the authority for granting 20-year leases from the General Court. This would encourage long-term agricultural-based property “stewardship,” according to DFA. DFA also felt that a long-term lease may serve farmers as a collateral asset or as a financial criterion to obtain bank financing. This second point is questionable, however, because a twenty-year lease, so called, with the Commonwealth is, in actuality, twenty one-year leases as funds are subject to annual appropriation. While a state lease is more secure than a one-year license, it is albeit less secure than a standard commercial lease. The Bureau, at the suggestion of DCAM, advised DFA that any land-lease arrangement must be legislatively approved.

DFA has obtained legislative consent for leasing in the past, most notably the Northampton Agricultural Reserve which was transferred to DFA’s care and control and authorized for a 99-year lease. The City of Northampton leases it for the Smith Vocational and Agricultural High School for uses including silage corn, hay, alfalfa, vegetables, woodland and wildlife management, and recreational opportunities.

FEE STRUCTURE

One of the initial concerns about the program as expressed in the request for a Bureau examination was whether or not the “lease” rates being charged are on a par with the market rate for leasing farmland. The Bureau found that numerous factors are involved in determining the price of the “lease.” Those factors include the value of the proposed crop; soil quality and management needs; technical advice from the United States Department of Agriculture’s (USDA) Natural Resource Conservation Service and Agricultural Stabilization and Conservation Services; market-based rates determined by the USDA’s Farm Services Agency’s county-based offices; New England Agricultural Statistics; the rate of the previous “lease” on a particular field; knowledge of the local farmers and the local agricultural market; and the level of demand. The myriad aspects necessarily considered in pricing each field render it virtually impossible to establish set amounts for the land in the program.

Another aspect of the pricing problem can be seen in the work of the Commonwealth’s Farmland Valuation Advisory Commission administered by the state Department of Revenue.

The Commission recommends suggested values to municipal assessors (it does not mandate) based upon a survey system similar to the DFA pricing system.

DFA has the flexibility to examine the overall management and land use plan submitted by each bidder and thus determine the most appropriate bid for the land. They therefore do not have to automatically accept the highest bid. The bids can vary significantly depending upon the proposed crop. DFA informed the Bureau that only once has a bid award been contested. Once the losing bidder was informed why his management plan was inappropriate for the land, he was mollified.

On occasion, some of the land is not “leased” in exchange for monetary payment; rather, the state receives “services in lieu of payment.” Such an arrangement is utilized when a parcel of land requires some improvement such as significant fertilization to bring it up to a productive level or when maintenance and public safety are considerations. Currently there are three parcels being used under such an arrangement for one-year special permits. The farmers cut the fields to keep them open; otherwise, state employees would have to maintain the fields themselves. When the future of these three fields is determined, DFA told the Bureau that it will charge a market-based rate for their further use.

Similarly, there is a parcel of land being “leased” for \$1 per acre per year for five years, as it is in need of “reclamation and improvement,” including reseeding and drainage issues. Typically, when such an arrangement is made, the DFA renegotiates the “lease” rate to reflect current market values before renewing a “lease.”

The State-owned Farmland Program provides other benefits to the Commonwealth and to the farmers. DFA contends that the farmers’ presence on the land is good for the productivity of the land and for the deterrence it provides against vandalism, illegal dumping, etc., that might otherwise be more prevalent on little-used state land. Also, DFA pointed out that state-owned farmland becomes more important to farmers as development squeezes land availability. Additionally, the SOFP is a contributor to the state’s plans for open space preservation.

OPEN SPACE AND MULTIPLE AGENCY INVOLVEMENT

The DFA’s state-owned farmland program is required to agriculturally manage certain lands in conjunction with other state agencies. This multi-agency arrangement can lead to

difficulties. In the course of its field examinations, the Bureau observed such a conflict: amateur model plane enthusiasts were utilizing a hayfield “leased” to a farmer to fly their planes. This included takeoff, flying around the open space of the field, and landing the model aircraft. The aircraft are powered by small, gasoline engines. This is not so much of a problem in the winter months when there is only a “cover crop” on the field. It is sometimes a problem in the growing season when a private entity (farmer) has contracted with the agency and experienced some damage to the crop. Complicating the problem is that the model enthusiasts have made use arrangements with the agency possessing the field, while the farmer has made his arrangement with DFA, which is managing the field. Thus, both farmer and model pilots believe they have permission to use the land. DFA prefers that the opposing users reconcile their differences privately. Sometimes this is possible, sometimes it is not.

The Bureau makes this observation in part because it was encountered in its field work, but also because in the course of its discussions with the DFA, the agency noted that the open space goals articulated by the Executive Office of Environmental Affairs (EOEA) and the Administration, and supported by the General Court, may have a role for the state’s agricultural interests. The DFA and EOEA goals involve multiple agency participation for open space protection and, as illustrated in the above example of open space use by model airplane enthusiasts, the sometimes competing interests of various groups and agencies over the use of state land need to be carefully considered.²

DFA told the Bureau that an EOEA document entitled View from Borderland articulated a goal of preserving 200,000 acres of open space over the next ten years. The Bureau obtained this report from the Massachusetts State Library. DFA believes that the initiative to protect open space and its state-owned farmland program could be used in tandem to not only protect open space, but, significantly, to use land the Commonwealth already owns for agricultural purpose. This agricultural usage may generate a modest revenue rather than a state cost to acquire and maintain the land. Protecting open space in this way would require coordination between the agencies possessing the land and arranging for DFA to have appropriate management authority

² An example of conflicting interests in preserving open space was portrayed in the Bureau’s conversation with the Metropolitan District Commission (MDC) regarding their management of the Quabbin Reservoir and other state properties. The MDC indicated that they view agriculture as a potential threat to water quality, and any agricultural use of state lands under MDC control is evaluated solely on that basis. As a result, according to the MDC, this divergence in mission and viewpoint between the two agencies often leads to some tension.

in order to license any state-owned land for agricultural use. DFA characterized this interest as a priority over the long term, not an immediate interest.

The arrangements discussed in the preceding paragraph would require Administrative action and legislative approval. In addition, DFA believes that a survey augmenting DCAM's Real Property Report (an inventory of all state-owned real estate) is necessary to determine which state-owned properties are suitable for agricultural use. The cost and feasibility of that augmentation of the Real Property Report are unknown. Some effort and expense would have to be initially undertaken if there were a desire to use existing state-owned property to achieve open space protection goals.

Whether or not any of these initiatives are undertaken, the issue of multiple agency involvement is still an issue for legislative consideration. Not only is state-owned property of value to model plane enthusiasts as noted earlier, but other municipal and community groups, such as community athletic associations' interest in state property is increasing. Soccer fields, for example, are a demand of increasing frequency in municipalities across the Commonwealth, particularly as development reduces open space availability. This increased interest in state-owned land could potentially lead to confusion and/or to conflicting plans of various state and community entities regarding the most appropriate use of the land.

In addition, there is currently agricultural use of land and licensing of that land conducted by other agencies, separate and apart from DFA's SOFP. Examples of those programs are: the Department of Corrections at Bridgewater, Concord, Gardner and Shirley; the Departments of Mental Health and Retardation at Fernald State School, Glavin Regional Center, Monson Development Center, Wrentham State School, and Medfield State Hospital; the Division of Capital Asset Management at Belchertown State School; Massport at Hanscom Field; and the University of Massachusetts on lands in Amherst, South Deerfield, Waltham, Belchertown, and East Wareham.

CONCLUSION

Through its State-owned Farmland Program, the Department of Food and Agriculture has been issuing "leases" rather than licenses to use state-owned property. The Bureau believes that DFA's actions were in good faith and were partly based on misunderstanding. Moreover, DFA

may not be alone in its misconception of its ability to “lease” state-owned property. Therefore, DCAM and DFA should combine efforts to bring the SOFP into compliance with M.G.L. c.7 and to transfer current “leases” to the more appropriate licenses. Furthermore, DCAM should take steps to notify all state agencies of this common misconception in order to prevent similar issues in the future.

The rates charged for the SOFP land are determined by myriad factors, all of which involve serious analysis and expertise. This price strategy is the responsibility of the agency. The Commonwealth receives additional benefits from the program, such as increased stewardship of Massachusetts’ open space, and in turn the Commonwealth provides a valuable service to farmers who are facing a decrease in farmland availability.



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March 24, 2000

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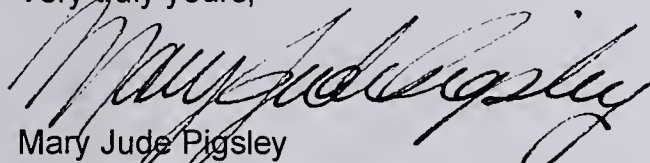
Re: State-owned Farmland Program

Dear Mr. Tansey:

Thank you for providing me with an opportunity to comment on the House Post Audit and Oversight Bureau's draft preliminary report on the State-owned Farmland Program. I have enclosed a marked-up draft that shows the very few comments that I have, and only one is substantive. I have marked all references to "one-year licenses" with a suggested change to "revocable-at-will licenses" so as to provide some flexibility to DCAM in crafting a form of license for the State-owned Farmland Program that could extend beyond one year.

I appreciate the opportunity to review the preliminary report in draft form, and thank you for your courtesy.

Very truly yours,



Mary Jude Pigsley
Acting General Counsel

MJP/mh
Enclosure



CHAPTER 11: THE NERVOUS SYSTEM

QUESTION	ANSWER
1. What is the function of the nervous system?	To coordinate and control the body's activities by transmitting information from the brain and spinal cord to the rest of the body.
2. What are the three main parts of the nervous system?	The brain, spinal cord, and peripheral nerves.
3. What is the difference between the central nervous system and the peripheral nervous system?	The central nervous system (CNS) consists of the brain and spinal cord, while the peripheral nervous system (PNS) consists of all the other nerves in the body.
4. What is a neuron?	A specialized cell that transmits electrical impulses throughout the body.
5. What are the three main types of neurons?	Sensory neurons, motor neurons, and interneurons.
6. What is the function of the myelin sheath?	To insulate the axon and speed up the transmission of electrical impulses.
7. What is a synapse?	A junction between two neurons where they meet and communicate.

8. What is the function of the brain?	To process information and control the body's activities.
9. What are the three main parts of the brain?	The cerebrum, cerebellum, and brainstem.
10. What is the function of the cerebellum?	To coordinate movement and balance.
11. What is the function of the brainstem?	To control basic life functions such as breathing and heart rate.
12. What is the function of the cerebrum?	To process information and control the body's activities.
13. What are the two main hemispheres of the cerebrum?	The left hemisphere and the right hemisphere.
14. What is the function of the left hemisphere?	To control language, logic, and analytical thinking.
15. What is the function of the right hemisphere?	To control spatial awareness, creativity, and intuition.
16. What is the function of the spinal cord?	To transmit information between the brain and the rest of the body.
17. What are the three main parts of the spinal cord?	The cervical, thoracic, and lumbar regions.
18. What is the function of the cervical region?	To control the neck and head.
19. What is the function of the thoracic region?	To control the chest and upper abdomen.
20. What is the function of the lumbar region?	To control the lower abdomen and legs.
21. What is the function of the sacral region?	To control the pelvic region.
22. What is the function of the coccyx?	To support the body and provide a point of attachment for muscles.